



Njoroge (Suing as the Legal Representative of the Estate of Elizabeth Wambui Njoroge) v Barclays Bank of Kenya Limited (Cause 1638 of 2016) [2024] KEELRC 504 (KLR) (7 March 2024) (Judgment)

Neutral citation: [2024] KEELRC 504 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1638 OF 2016
L NDOLO, J
MARCH 7, 2024

BETWEEN

MOSES GITAU NJOROGE (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ELIZABETH WAMBUI NJOROGE) CLAIMANT

AND

BARCLAYS BANK OF KENYA LIMITED RESPONDENT

JUDGMENT

1. The primary Claimant, Elizabeth Wambui Njoroge (Deceased) was a long serving employee of Barclays Bank of Kenya Limited, serving from 20th April 1977 until her retirement on 12th January 2016.
2. In her claim as contained in a Memorandum of Claim dated 10th August 2016 and amended on 16th March 2022, the primary Claimant accuses the Respondent of mismanaging her exit from the Bank. The Respondent filed a Memorandum of Defence dated 1st March 2017 to which the primary Claimant responded on 11th August 2017.
3. Pursuant to the passing on of the primary Claimant, her husband, Moses Gitau Njoroge obtained Grant of Letters of Administration Intestate dated 7th July 2021, upon which he was substituted as the Claimant and testified as such. Mumbi Kahindo, the Head of Leadership, Learning, Talent & Culture testified for the Respondent. Both parties also filed final submissions.

The Claimant's Case

4. The primary Claimant states that she was employed by the Respondent's affiliate, Barclays Bank Dominion Colonial Overseas (DCO) on 20th April 1977, as a clerk typist. She adds that she was formally deployed at the Respondent Bank in the year 2001.



5. It is pleaded that from 2013, the primary Claimant served as Regional Personal Assistant to the Chief Administrative Officer of Barclays Group Limited, in addition to serving as the Personal Assistant to the Respondent's Managing Director.
6. On 25th March 2013, the primary Claimant applied to leave the Bank through a voluntary early exit scheme but her request was declined. She complains that she did not receive official communication within the time stipulated in the circular issued by the Respondent. It is alleged that the primary Claimant was treated in a prejudicial and discriminatory manner in this regard.
7. The primary Claimant continued to serve in the position of Personal Assistant to the Managing Director until February 2014, when she was accused of unauthorised access to confidential information on her line Manager's email account.
8. She was subsequently barred from accessing the email account and was thereafter transferred to the new role of Customer Service Manager. According to the claim, the transfer was irregular. It is averred that the role of Customer Service Manager was clerical in nature and not aligned to the primary Claimant's skills and competencies. It is pleaded that the primary Claimant did not receive support in her new role and that her performance was unfairly rated as poor.
9. On 9th December 2015, the primary Claimant was notified via a short text message (SMS) that she was required to proceed on 23 days' annual leave, pending her retirement on 13th January 2017.
10. On 11th December 2015, the Respondent issued a retirement notice to the primary Claimant. It is averred that the notice, which was sent a month before the retirement date, was contrary to the standard procedure.
11. The claim seeks the following remedies:
 - a. Kshs. 8,372,436 being 12 months' salary in compensation for unfair termination;
 - b. Compensation as per the early retirement package as follows:
 - i. 1 month's salary in lieu of notice.....Kshs. 697,703
 - ii. Exit pay at one and a half month's consolidated pay for every completed year of service.....25,149,011
 - iii. Medical entitlement up to 31st December 2016
 - iv. Staff loan rates until payment in full with the option of 25% discount for early repayment
 - c. Payment for accrued leave;
 - d. General damages, including aggravated damages and exemplary damages for discrimination, unfair treatment and un-procedural termination;
 - e. Costs plus interest.

The Respondent's Case

12. In its Memorandum of Defence dated 1st March 2017, the Respondent admits having employed the primary Claimant from 1977 at the entry level of clerk typist until 13th January 2016, when she retired in the position of Customer Service Manager.



13. The Respondent states that Barclays Bank Dominion Colonial Overseas (DCO) is the same entity as Barclays Bank Kenya Limited, the name having changed after the enactment of the [Barclays Bank of Kenya Limited Act](#) on 29th September 1978.
14. The Respondent further states that the primary Claimant rose through the ranks and was appointed as Senior Executive Secretary in 2001, which position she held up to 3rd November 2008 when she was offered the position of Personal Assistant to the Managing Director. She held this position until 6th March 2014, when she was transferred to the position of Customer Service Manager.
15. The Respondent denies that the primary Claimant was the Regional Personal Assistant to the Chief Administrative Officer as the Respondent Bank did not have such a role in its organisational structure.
16. Regarding the claim that the primary Claimant was unfairly locked out of the early voluntary exit programme, the Respondent maintains that it retained the right to accept or decline applications from affected employees based on its organisational requirements.
17. The Respondent avers that the primary Claimant's position of Personal Assistant to the Managing Director was not affected by the organisational restructuring and her application for voluntary early exit was therefore not considered. According to the Respondent, the primary Claimant was advised verbally that her application had been declined. The Respondent denies the allegations of discrimination made by the primary Claimant.
18. The Respondent further denies the assertion that the primary Claimant's Line Manager had accused her of unauthorised access to confidential information on his email account.
19. On this issue, the Respondent states that by an email dated 26th February 2014, the Line Manager communicated his concerns regarding the primary Claimant's use of confidential information to try and influence her own individual situation. As an interim measure, the Line Manager suspended the primary Claimant's access to his emails and proposed to meet her to discuss the issue.
20. The Respondent denies the averment that the primary Claimant was irregularly transferred but states that the transfer was informed by breach of trust by the primary Claimant. The Respondent asserts that there was mutual agreement on the transfer, between the primary Claimant and her Line Manager.
21. The Respondent also denies that the primary Claimant's exit was contrary to existing procedures. According to the Respondent, the HRD Exit Management Procedures dated 14th May 2014 served as guidelines from the HR Director to HR Officers. The Respondent states that the primary Claimant's entitlements were contained in the contract of employment which provided for a one-month notice period, which was duly availed.

Findings and Determination

22. In the pleadings and submissions filed on behalf of the Claimant, an attempt was made to pursue a case of unfair termination of employment. However, according to the evidence on record, the primary Claimant's exit from the Respondent Bank was by way of normal retirement. The fact that her last day at work may have been a few days before the cut-off date does not change this fact.
23. Granted that before her exit, the primary Claimant had expressed her dissatisfaction with first, the turning down of her request for voluntary early exit and second, the decision to transfer her to the position of Customer Service Manager, there was no evidence of unfair termination of her employment. There cannot therefore be any legitimate claim on this score.



24. The primary Claimant also complained that she was unfairly accused of unauthorised access to confidential information from the Managing Director’s email account. While the Managing Director had taken issue with the handling of his email account by the primary Claimant, the Respondent appears not to have taken any action on the matter. At any rate, the primary Claimant was not subjected to any disciplinary proceedings as defined in law and no disciplinary action was taken against her.
25. Regarding her application for voluntary early exit, the primary Claimant averred that she was subjected to discrimination. She took issue with the fact that formal communication on the decision to decline her request was made a year after the deadline set by the Respondent.
26. On 2nd April 2014, the Respondent wrote to the primary Claimant as follows:

“Dear Elizabeth

RE: Voluntary Exit Circular Number 9/2013

We refer to our above circular dated 12th March 2013 and to subsequent conversations with the Human Resources Director and the Employee Relations Manager, whereby you were verbally informed of the decline to your early exit application. In strict accordance with the HRD circular no. 9 dated 12 March 2013, the program came to an end on 27th March 2013 when all approved applications and release dates of colleagues were advised.

We recognise the fact that although a verbal decline was communicated a formal written decline did not reach you. We regret the delay in providing this written communication to you. We therefore would like to advise you that this letter serves as formal communication that your application for voluntary exit was unsuccessful due to business needs.

We take this opportunity to thank you for your continued dedicated service to the bank.

Yours sincerely

(signed)

Susan Mwaura

Human Resources Director”

27. The circular dated 12th March 2013 indicated that notification of approved exit applications would be communicated by 27th March 2013. The primary Claimant did not receive any formal communication on her application until a year later on 2nd April 2014. The Respondent did not offer any explanation as to why it breached its own circular with regard to the primary Claimant’s application. Needless to say, this lapse caused the primary Claimant unnecessary anxiety.
28. Moreover, the Respondent failed to issue a retirement notice to the primary Claimant as required by its Exit Management Procedure dated 14th May 2014. According to this Procedure, the primary Claimant was entitled to a year’s notice prior to the retirement date.
29. By its own admission, the Respondent issued the primary Claimant with a one-month retirement notice, which fell short of its own established threshold by 11 months. Again, no explanation was offered for this lapse.
30. Retirement marks a major transition for employees. This is more so for those with a long history of dedicated service with a single employer, such as the primary Claimant. The requirement for retirement notice is not an idle one; it serves to prepare the employee both psychologically and practically into the



next phase of their lives. The Respondent appears to have recognised this reality thus providing for an elaborate process, including a year's notice to the retiring employee.

31. It was not lost on the Court that the Respondent violated its own notice requirements twice; first, with regard to the communication on the primary Claimant's application for voluntary early exit and second, on her retirement notice.
32. These lapses were injurious to the primary Claimant and I therefore make an award for three (3) months' salary in satisfaction of the injury. In making this award, I have taken into account the Respondent's mishandling of the primary Claimant's exit, moderated by the fact that she was paid all her terminal dues.
33. Since the primary Claimant did not leave employment under the voluntary early exit programme, her claim for the applicable package is without basis and is disallowed.
34. There is evidence that the primary Claimant utilised all her accrued leave days and the claim thereon is therefore misplaced.
35. No basis was established for the claim for general, aggravated and exemplary damages which consequently fails and is disallowed.
36. Finally, I enter judgment in favour of the Claimant in the sum of Kshs. 2,429,109.
37. This amount will be subject to statutory deductions and will attract interest at court rates from the date of judgment until payment in full.
38. The Claimant will have the costs of the case.
39. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF MARCH 2024

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JUDGE

Appearance:

Mr. Muoki for the Claimant

Mr. Okeche for the Respondent

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